

(vi) Show that each proposed count for the additional interference defines a separate patentable invention from all counts in the interference in which the motion is filed.

(vii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier filed application, if benefit is desired with respect to a proposed count.

(viii) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not also entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.

(f) A preliminary motion for benefit under § 1.633(f) shall:

(1) Identify the earlier application.

(2) When an earlier application is an application filed in the United States, certify that a complete copy of the file of the earlier application, except for documents filed under § 1.131 or § 1.608, has been served on all opponents. When the earlier application is an application filed in a foreign country, certify that a copy of the application has been served on all opponents. If the earlier filed application is not in English, the requirements of § 1.647 must also be met.

(3) Show that the earlier application constitutes a constructive reduction to practice of each count.

(g) A preliminary motion to attack benefit under § 1.633(g) shall explain, as to each count, why an opponent should not be accorded the benefit of the filing date of the earlier application.

(h) A preliminary motion to add an application for reissue under § 1.633(h) shall:

(1) Identify the application for reissue.

(2) Certify that a complete copy of the file of the application for reissue has been served on all opponents.

(3) Show the patentability of all claims in, or proposed to be added to, the application for reissue which correspond to each count and apply the terms of the claims to the disclosure of the application for reissue; when nec-

essary a moving applicant for reissue shall file with the motion an amendment adding any proposed claim to the application for reissue.

(4) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier filed application, if benefit is desired.

[49 FR 48455, Dec. 12, 1984; 50 FR 23124, May 31, 1985, as amended at 53 FR 23735, June 23, 1988; 58 FR 49434, Sept. 23, 1993; 60 FR 14524, Mar. 17, 1995]

§ 1.638 Opposition and reply; time for filing opposition and reply.

(a) Unless otherwise ordered by an administrative patent judge, any opposition to any motion shall be filed within 20 days after service of the motion. An opposition shall identify any material fact set forth in the motion which is in dispute and include an argument why the relief requested in the motion should be denied.

(b) Unless otherwise ordered by an administrative patent judge, any reply shall be filed within 15 days after service of the opposition. A reply shall be directed only to new points raised in the opposition.

[60 FR 14525, Mar. 17, 1995]

§ 1.639 Evidence in support of motion, opposition, or reply.

(a) Except as provided in paragraphs (c) through (g) of this section, proof of any material fact alleged in a motion, opposition, or reply must be filed and served with the motion, opposition, or reply unless the proof relied upon is part of the interference file or the file of any patent or application involved in the interference or any earlier application filed in the United States of which a party has been accorded or seeks to be accorded benefit.

(b) Proof may be in the form of patents, printed publications, and affidavits. The pages of any affidavits filed under this paragraph shall, to the extent possible, be given sequential numbers, which shall also serve as the record page numbers for the affidavits in the event they are included in the party's record (§ 1.653). Any patents and printed publications submitted under this paragraph and any exhibits identified in affidavits submitted under this paragraph shall, to the extent possible,